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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/776,857	02/11/2004	William Gatling	4731-003/COD	3892
27572	7590	08/05/2004	EXAMINER	
HARNESS, DICKEY & PIERCE, P.L.C.			JIANG, CHEN WEN	
P.O. BOX 828			ART UNIT	
BLOOMFIELD HILLS, MI 48303			PAPER NUMBER	

3744

DATE MAILED: 08/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/776,857	GATLING ET AL.	
	Examiner	Art Unit	
	Chen-Wen Jiang	3744	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 11 February 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) 16-19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1,2,4-17 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Wilkinson (GB 2235780).

Wilkinson discloses a temperature monitoring apparatus for monitoring the temperature of items retained, stored, or displayed in refrigerated cabinets or hot cabinets. The apparatus comprises a simulator in a casing, temperature sensing means adapted to sense the temperature of the simulator and a micro-processing means to allow the simulated characteristics to be modified in accordance with the product temperature. The simulator comprises material whose characteristics under temperature change are similar to a specific product over a specific temperature change. The apparatus may include a transmitter and receiver, in the form of a radio pager, to a remote location.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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4. Claims 3 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wilkinson (GB 2235780).

In regarding to claims 3 and 8, Wilkinson discloses a transmitter and receiver but does not disclose the locations of the transmitter and receiver. Also, upon a close review of applicant's specification, it appears that the claimed either within the housing or external the housing do not have any criticality and/or lead to any new and unexpected results. Applicant does not specify the deficiencies of other locations used in the prior art. Therefore, it would have been obvious to one of ordinary skill in the art to have selected the claimed locations for the transmitter and receiver since these particular location provide no better or improved performance over that which is commonplace in the prior art.

5. Claims 1,4,5,6,7,8,9,10,11,12,15,16 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over McCain et al. (U.S. Patent Number 4,468,135) in view of Shim (U.S. Patent Number 5,421,247).

McCain et al. disclose a thermal simulator and method for a flexible pouch in which food is cooked and sterilized. It is user's choice to have the apparatus and method used on either heating or cooling. The simulator 10 is provided which approximates the heat diffusivity of food within a flexible retort pouch. The simulator 10 consists of a thermal sensor 12 centrally disposed within a block 14 and a computing apparatus 20 is preferably employed to relate measured temperatures to meaningful thermal parameters. The controller changes operating conditions until a desired uniformity of heat transfer rates at all locations within said chamber is achieved. However, McCain et al. do not disclose wireless function. Shim discloses a temperature sensor and using a wireless technique to connect the sensor, a radio receiver 26 and

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a controller 25 in the same field of endeavor for the purpose of eliminating wires in a refrigerator (display case is a refrigerator). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the apparatus of McCain et al. with a wireless controller in view of Shim so as to eliminate wires. Under the principals of inherency, if a prior art device, in its normal and usual operation, would necessarily perform the method claimed, then the method claimed will be considered to be anticipated by the prior art device. When the prior art device is the same as a device described in the specification for carrying out the claimed method, it can be assumed the device will inherently perform the claimed process. *In re King*, 801 F.2d 1324, 231 USPQ 136 (Fed. Cir. 1986).

6. Claims 1,5,6,7,8,9,10,11,12,15 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Butts (U.S. Patent Number 3,690,175) in view of Shim (U.S. Patent Number 5,421,247).

Butts discloses a mechanism for predicting food temperatures of a foodstuff model shown in a display case. FIG. 4 is a time-temperature chart comparing the actual temperature at the surface of a piece of meat with that taken by the model shown in Figs.1 through 3 under identical environmental conditions. This means that they have the similar thermal properties. A thermocouple 8 is mounted on the model and connected to a meter 20. The display case is maintained at a certain temperature. Fig.6 shows the simulated article temperature and actual foodstuff temperature. However, Butts does not disclose wireless function. Shim discloses a temperature sensor and using a wireless technique to connect the sensor, a radio receiver 26 and a controller 25 in the same field of endeavor for the purpose of eliminating wires in a refrigerator (display case is a refrigerator). Therefore, it would have been obvious to one having ordinary

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skill in the art at the time the invention was made to provide the apparatus of Butts with a wireless controller in view of Shim so as to eliminate wires. Under the principals of inherency, if a prior art device, in its normal and usual operation, would necessarily perform the method claimed, then the method claimed will be considered to be anticipated by the prior art device. When the prior art device is the same as a device described in the specification for carrying out the claimed method, it can be assumed the device will inherently perform the claimed process. *In re King*, 801 F.2d 1324, 231 USPQ 136 (Fed. Cir. 1986).

### ***Double Patenting***

7. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

8. Claims 1-4 and 6-19 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 2-6 of U.S. Patent No. 6,502,409.

Although the conflicting claims are not identical, they are not patentably distinct from each other because '409 claims refrigeration case (display case), a housing with thermal mass having thermo-physical properties similar to food product, thermistor centered in the thermal mass, a receiver with wirelessly transmit data, a receiver and a controller.

9. Claims 1,2,4,6,7,9,10,11,12,13,15,16,17 and 19 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-27 of U.S. Patent No. 6,378,315. Although the conflicting claims are not identical, they are not patentably distinct from each other because '315 claims refrigeration case (display case), a housing with thermal mass having thermo-physical properties similar to food product, thermistor centered in the thermal mass, a receiver with wirelessly transmit data, a receiver and a controller.

10. Claims 1,2,3,4,6,7,8,10,11,12,13,14,15,16,17 and 18 provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-6 of copending Application No. 10/390,308. Although the conflicting claims are not identical, they are not patentably distinct from each other because 10/390,308 claims refrigeration case (display case), a housing with thermal mass having thermo-physical properties similar to food product, thermistor centered in the thermal mass, a receiver with wirelessly transmit data and a receiver.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chen-Wen Jiang whose telephone number is (703) 308-0275. The examiner can normally be reached on Tuesday-Friday from 7:00 to 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Denise Esquivel can be reached on (703) 308-2597. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Chen-Wen Jiang  
Primary Examiner

A handwritten signature in black ink, consisting of a stylized 'C' followed by a series of loops and a final horizontal stroke.